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6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Keith Ranieri,

10 Plaintiff,

11 v.

12 Merrick Garland, et al.,

13 Defendants.  
14

No. CV-22-00561-TUC-RCC

**ORDER**

15 Plaintiff asks the Court to enter default judgment against Defendant Mark Gutierrez.  
16 (Doc. 11.) Gutierrez filed a response (Doc. 12), Plaintiff did not file a reply. The Court will  
17 deny the motion.

18 Plaintiff's Application for Entry of Default Judgment claims he served Gutierrez on  
19 January 12, 2023, making the deadline for Gutierrez's response to the Motion for  
20 Preliminary Injunction (PI Motion) February 2, 2023. (Doc. 11 at 2.) Since was Gutierrez  
21 did not file a response until February 7, 2023, Plaintiff believes he is entitled to default  
22 judgment. (*Id.* at 3.) Gutierrez argues that Plaintiff's alleged service was not proper until  
23 January 17, 2023, and so he had until February 7, 2023 to respond to the PI Motion and  
24 until March 20, 2023 to respond to the Complaint. (Doc. 12 at 4.)

25 The Court's January 4, 2022 Screening Order required Plaintiff serve the Summons  
26 and the Complaint on Gutierrez and required Gutierrez to respond pursuant to Federal Rule  
27 of Civil Procedure 12(a). (Doc. 6 at 4.) The Screening Order also allowed Gutierrez to  
28 respond to the PI Motion within 21 days of being served both the Complaint and the PI

1 Motion. (*Id.* at 5.)

2 Plaintiff filed an affidavit of service the same day as the Court's Screening Order,  
 3 claiming he served Gutierrez the Complaint, PI Motion, and Notice of Lawsuit and Request  
 4 to Waive Service of a Summons on December 29, 2022. (Doc. 5.) Plaintiff filed a  
 5 subsequent affidavit on January 25, 2023, alleging he served the Complaint, Motion for  
 6 Preliminary Injunction, *Summons*, and the Court's Order on *December 20, 2022*, and that  
 7 these documents were delivered by certified mail on January 12, 2023. (Doc. 9 at 1.) This  
 8 is implausible, because the Clerk's Office did not issue the Summons until January 5, 2023.  
 9 (Doc. 8-1 at 1.) Plaintiff claims he also served the Director of the Bureau of Prisons in  
 10 Washington, D.C. on January 23, 2023, and Attorney General Merrick Garland in  
 11 Washington, D.C. on January 24, 2023. (Doc. 9.)

12 Under Rule 4(i) of the Federal Rules of Civil Procedure:

13 **(i) Serving the United States and Its Agencies, Corporations,**  
 14 **Officers, or Employees**

15 **(a) *Agency; Corporation; Officer or Employee Sued in an Official***  
 16 ***Capacity.*** To serve . . . a United States officer or employee sued only  
 17 in an official capacity, a party *must serve the United States and also*  
 18 *send a copy of the summons and of the complaint by registered or*  
*certified mail to the agency, corporation, officer or employee.*

19 Fed. R. Civ. P. 4(i)(2) (emphasis added). Service on the United States requires three steps.

20 To serve the United States, a party must:

21 **(A)**

22 (i) deliver a copy of the summons and of the complaint to the United  
 23 States attorney for the district where the action is brought—*or* to an  
 24 assistant United States attorney *or* clerical employee whom the United  
 States attorney designates in a writing filed with the court clerk—*or*

25 (ii) send a copy of each by registered or certified mail to the civil-process  
 26 clerk at the United States attorney's office;

27 **(B)** send a copy of each by registered or certified mail to the Attorney General  
 28 of the United States at Washington, D.C.; and

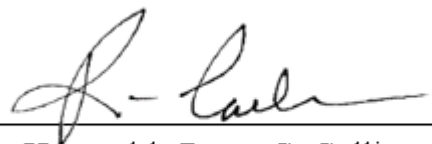
1 (C) if the action challenges an order of a nonparty agency or officer of the  
2 United States, send a copy of each by registered or certified mail to the  
3 agency or officer.

4 *Id.* at 4(i)(1)-(2) (emphasis added). "[A] United States officer or employee sued only in an  
5 official capacity must serve an answer to a complaint . . . within 60 days after service on  
6 the United States attorney." *Id.* at 12(a)(2).

7 Plaintiff allegedly sent the Summons and Complaint by certified mail to Gutierrez  
8 on January 12, 2023 and to Attorney General Merrick Garland on January 24, 2023.  
9 However, there is no indication—nor does Plaintiff assert—that he served the Complaint,  
10 Summons, and the Court's Screening Order on the United States attorney for the District  
11 of Arizona, an assistant United States attorney, or a clerical employee or the civil-process  
12 clerk at the United States attorney's office. Thus, service on Gutierrez is not complete,  
13 regardless of whether Gutierrez received Plaintiff's documents through certified mail on  
14 January 12 or January 17, 2023.

15 Accordingly, IT IS ORDERED Plaintiff's Application for Entry of Default  
16 Judgment—Warden Mark Gutierrez is DENIED. (Doc. 11.)

17 Dated this 24th day of February, 2023.

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22 Honorable Raner C. Collins  
23 Senior United States District Judge  
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